IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, A. D. 1905

Supreme Court, U. S.
FILED
FEB 19 1906
Clerk

PEOPLE OF THE STATE OF ILLINOIS EX REL. GEORGE W. FELTS, *Appellants,*

vs.

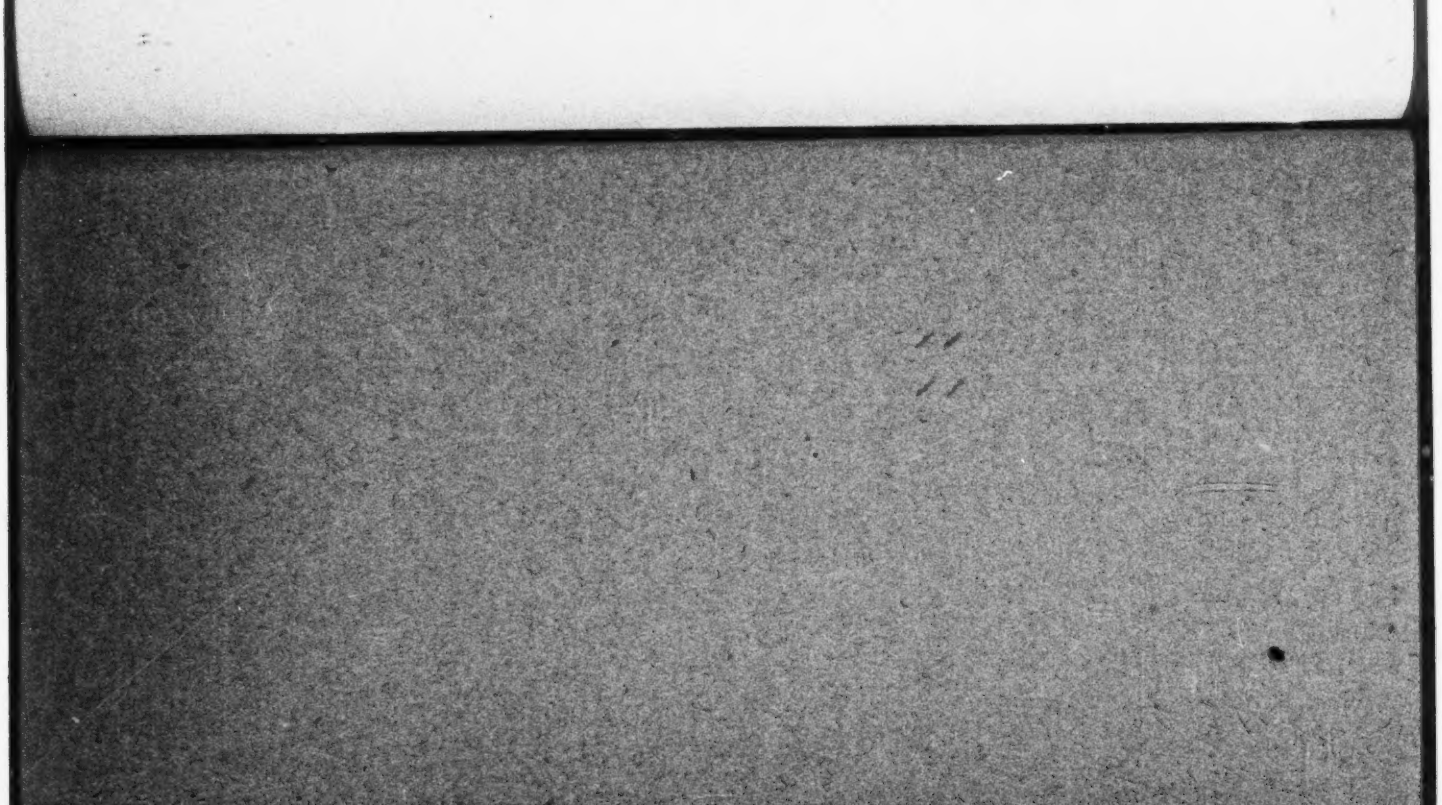
E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS, *Appellee.*

Appeal from the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

BRIEF AND ARGUMENT FOR APPELLEE.

WILLIAM H. STEAD, *Attorney General of Illinois,*
EDGAR ELDREDGE, *Asst. Atty. General,*
Attorneys for Appellee.

Journal Co., Printers, Springfield, Ill.



IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, A. D. 1905

PEOPLE OF THE STATE OF ILLINOIS EX REL. GEORGE W. FELTS, *Appellants,* vs. E. J. MURPHY, WARDEN OF THE STATE PENITENTIARY AT JOLIET, ILLINOIS, *Appellee.*	*Appeal from the Circuit Court of the United States, Northern District of Illinois, Eastern Division.*

BRIEF AND ARGUMENT FOR APPELLEE.

STATEMENT.

May it Please the Court:

The relator, George W. Felts, was indicted by the Grand Jury of Winnebago County, Illinois, for the crime of murder, and at the January term, A. D.

1905, of the Circuit Court of said county, he was tried upon said indictment, found guilty and sentenced to the penitentiary at Joliet for his natural life.

No writ of error was ever prosecuted by the relator to the Supreme Court of Illinois, but the relator, without attempting to get the judgment rendered on said indictment reviewed or reversed, has made several attempts to be set at liberty upon petitions for *habeas corpus* on the ground that he was so hard of hearing that he could not on the trial hear the examination of the jurors, nor the evidence which was introduced.

The trial of this case lasted about two weeks. The relator was furnished at the outset, before his plea was entered, with a copy of the indictment and a list of witnesses and jurors. He was represented on the trial by counsel. He was granted a continuance by the Court in order to better prepare for his trial. The trial was conducted in all respects as trials for criminal offenses are conducted under the laws of the State of Illinois. At no time during the progress of the trial, did the relator, or his counsel, ask or demand that the testimony on the examination of jurors or the testimony of witnesses produced on said trial,

be written out for the benefit of relator, nor was any exception taken by the relator, or his counsel, to the method of procedure adopted by the Court on the trial. The relator himself testified on his own behalf, was examined by his counsel and cross examined by the State's attorney, who prosecuted on behalf of the People. There is no contention that any of his constitutional rights were violated, except that on account of his infirmity, the Court should have ordered the testimony given by the jurors and witnesses to have been transcribed and furnished to him for his examination, on the theory that he had a constitutional right to hear the examination of the jurors and the testimony of the witnesses, which constitutional right could not be waived, notwithstanding he did not demand it on the trial.

The first application for a writ of *habeas corpus* was made before Judge SANBORN, of the Circuit Court of the United States, who refused to consider it. The next application was made before Judge HONORE, of the Circuit Court of Cook County, who denied the writ. The next application was made to the Supreme Court of the State of Illinois, who refused the relator leave to file his petition. The next application was made before Judge LANDIS, of the United States Cir-

cuit Court, who refused to grant the writ, and this cause is now in this Court on an appeal from the order of Judge LANDIS in so refusing to grant said writ.

BRIEF.

It has been too frequently decided to be now open to question that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal.

In re Lennon, 166 U. S., 552;
In re Eckark, 166 U. S., 481;
United States v. *Pridgeon,* 153 U. S., 48;
Reid v. *Jones,* 187 U. S., 153;
Ex parte Bigelow, 113 U. S., 328;
Ex parte Belt, 159 U. S., 95;
Storti v. *Massachusetts,* 183 U. S., 138;
Ex parte Tyler, 149 U. S., 164;
Ex parte Cuddy, 131 U. S., 280;
Ex parte Terry, 128 U. S., 289;
Ex parte Kearney, 7 Wheat., 38, 43;
In re Coy, 127 U. S., 731;
In re Schneider, 148 U. S., 162;
In re Debs, 158 U. S., 564, 600;
Ex parte Watkins, 3 Pet., 193;
Ex parte Yarborough, 110 U. S., 651;
In re Swan, 150 U. S., 637;
Ex parte Ayers, 123 U. S., 443;
Ex parte Fiske, 113 U. S., 713;

Dynes v. *Hoover,* 20 How., 81, 83;
Ex parte Reed, 100 U. S., 13;
Ex parte Parks, 93 U. S., 18;
Ornelas v. *Ruiz,* 161 U. S., 502;
Markuson v. *Boucher,* 175 U. S., 184;
New York v. *Eno,* 155 U. S., 88;
Baker v. *Grice,* 169 U. S., 284;
Bishop Criminal Procedure, sec. 1410;
Church on *Habeas Corpus,* 2d Ed., sec. 356, 363.

There is no law or justice in giving to a prisoner relief under *habeas corpus* that is equivalent to an acquittal, when on writ of error he could only have secured relief from that portion of the sentence which was void.

United States v. *Pridgeon,* 153 U. S., 48.

Mere errors, or irregularities, however gross, in the judgment, or the proceedings upon which the judgment was founded, will not be sufficient to obtain release on writ of *habeas corpus.*

15 Am. and Eng. Ency. of Law, 2d Ed., 172;
Church on *Habeas Corpus,* 2d Ed., sec. 363;
People v. *Allen,* 160 Ill., 400.

If the Court has jurisdiction of the person and of

the subject matter, the judgment cannot be inquired into in a collateral proceeding.

People v. *Murphy*, 202 Ill., 493;
People v. *Allen*, 160 Ill., 400;
Church on *Habeas Corpus*, 2d Ed., sec. 356.

Having acquired complete jurisdiction to hear, determine and adjudicate in reference to the subject matter before it, the Court did not, nor could it lose that jurisdiction by any error that may have been subsequently committed; for error intervening after the judgment attached, the judgment must be reversed in a direct proceeding on appeal or writ of error, but that cannot be urged in a collateral suit.

Herandex v. *Drake*, 81 Ill., 34;
Richard v. *People*, 81 Ill., 551;
Alman v. *Taylor*, 101 Ill., 185;
Spring v. *Kane*, 86 Ill., 580;
People v. *Murphy*, 202 Ill., 493.

ARGUMENT.

It is conceded and not questioned that the Circuit Court of Winnebago County, Illinois, had jurisdiction of the subject matter in the trial of the relator in the case in which he was convicted of murder. It is conceded and not questioned that said Circuit Court

had jurisdiction of the person of the relator in said cause. It is contended, however, that by reason of the infirmity of the relator the Court in the trial of said cause should have caused the examination of the jurors and the testimony of the witnesses to be written out and submitted to him, and because the Court failed to do so, he was not tried by *due process of law* but was deprived of his constitutional rights, and the judgment entered in said cause is *void*. There is no merit in this contention. If it be conceded, for the sake of argument, that upon the trial of a person afflicted with deafness, it is the duty of the trial Court to take such a procedure, the fact that the trial Court did not do so, would be but a mere irregularity or error, which could have been corrected upon a writ of error to the Supreme Court of Illinois. No writ of error was sued out from the Supreme Court of Illinois, and no attempt has *ever* been made to have the judgment in said cause reviewed. If the writ of *habeas corpus* is allowed, it is the same as an acquittal, or a verdict of not guilty. The contention that the trial Court lost jurisdiction of the case, or of the person of the relator upon its failure to have such testimony transcribed and delivered to him is untenable. If he had prosecuted the writ of error from

the Supreme Court of Illinois and that Court had determined that the proper procedure in the trial of a person afflicted with deafness is to have the testimony transcribed and delivered to him, the Supreme Court of that State would not have held that the trial Court had lost jurisdiction, but would have reversed the case and remanded it for another trial, to be conducted in accordance with such procedure. If, on such a writ of error to the Supreme Court of Illinois, that Court should have decided that such a procedure in transcribing the testimony was unnecessary, and should have affirmed the judgment, and if the relator had subsequently sued out a writ of error from this Court to review the judgment of the Supreme Court of Illinois upon this question, and if this Court should have been of the opinion that such a procedure was necessary, and that the judgment of the Supreme Court of Illinois was erroneous, even this Court would not discharge the prisoner, but would reverse the judgment of the Supreme Court of Illinois, and remand the case for another trial.

It is not conceded here that there was any obligation upon the trial Court to have the examination of the jurors and the testimony of the witnesses transcribed for the benefit of a defendant charged with a

criminal offense upon his trial. Suppose that the relator had been ignorant and could not read, what then would be the use of transcribing such examination and testimony? But we submit that this question has no bearing upon the question at issue in the case at bar.

If the contention of appellee is correct that the action, or rather non action, of the trial Court in the matter of having the examination of the jurors and the testimony of the witnesses transcribed, was but a mere error and irregularity, then the appellant cannot maintain his petition for a writ of *habeas corpus*.

It has been decided times without number by this Court, by the Supreme Courts of every State in this country, and by every text book, that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal.

This Court in the case of *In re Lennon*, 166 U. S., 552, through Mr. Justice BROWN, stated:

> "It has been too frequently decided to be now open to question that a writ of *habeas corpus* cannot be made use of to perform the functions of a writ of error or an appeal."

In the case of *In re Eckart*, 166 U. S., 481, it ap-

peared that the petitioner was convicted for the crime of murder, and that the ground relied upon to establish that the imprisonment under the judgment was unlawful was, because under the laws of Wisconsin, murder is divided into three degrees, the punishment varying according to the degree, and that, as the verdict in question failed to specify the degree of murder of which the accused was found guilty, the trial Court was without jurisdiction to pass sentence and judgment upon the accused, and the deprivation of liberty under such judgment was without due process of law. It also appeared that the petitioner had applied for a writ of *habeas corpus* to the Supreme Court of Wisconsin, asserting in his petition the same grounds relied upon in this Court. It also appeared that the Supreme Court of Wisconsin had held that under the statutes of that State, the jury must find the degree in their verdict in order that the Court might impose proper punishment.

This Court, speaking through Mr. Justice WHITE, held as follows:

> "In its decision refusing the writ applied for by Eckart, the Supreme Court of Wisconsin held that while the conviction under the sentence in question was erroneous, the error in passing sen-

etnce was not a jurisdictional defect, and the judgment was, therefore, not void. In this view we concur. The Court had jurisdiction of the offense charged and of the person of the accused. The verdict clearly did not acquit him of the crime with which he was charged, but found that he had committed an offense embraced within the accusation upon which he was tried. It was within the jurisdiction of the trial judge to pass upon the sufficiency of the verdict, and to construe its legal meaning, and if, in so doing, he erred and held the verdict to be sufficiently certain to authorize the imposition of punishment for the highest grade of the offense charged, it was error committed in the exercise of jurisdiction, and one which does not present a jurisdictional defect remediable by a writ of *habeas corpus.*"

And this Court in the same case also held:

"The case presented by the record is not within any of the exceptions to the general rule, that when a Court has jurisdiction by law of the offense charged, and of the party who is so charged its judgments are not nullities which can be collaterally attacked. The writ of *habeas corpus* cannot be made to perform the functions of a writ of error."

The relator, in the case at bar, applied for a writ of

habeas corpus to the Supreme Court of Illinois, and that Court in denying said writ, held:

> "It is not claimed that a person whose hearing is defective may commit murder of whom he chooses and may not be tried or punished for the offense. If there were any error in the matter it would only be ground for a writ of error and review by the Court, and an order for a new trial where he might be furnished with an ear trumpet, or in some way made to hear what the witnesses said, but, in the opinion of the Court, the ground set forth is no cause for a reversal of the judgment."

This Court, in the case of *Markuson* v. *Boucher*, 175 U. S., 184, in an opinion rendered by Mr. Justice McKenna, held as follows:

> "In the brief of appellant's counsel, and also in that of the Attorney General of the State, as well as in oral argument, the constitutional points raised were argued at length. We are not disposed to consider them. We have frequently pronounced against the review by *habeas corpus* of the judgments of the State Courts in criminal cases because some right under the Constitution of the United States was alleged to have been denied the person convicted, and have repeatedly decided that the remedy was by writ of error."

And in the last case cited, this Court cites with approval the case of *Baker* v. *Grice,* 169 U. S., 284, in which it was stated:

> "Instead of discharging they (the Federal Courts) will leave the prisoner to be dealt with by the Courts of the State; that after a final determination of the case by the State Court, the Federal Courts will even then generally leave the petitioner to his remedy by writ of error from this Court. The reason for this course is apparent. It is an exceedingly delicate jurisdiction given to the Federal Courts by which a person under an indictment in the State Court, and subject to its laws, may, by the decision of a single judge of the Federal Court, upon a writ of *habeas corpus* be taken out of the custody of the officers of the State and finally discharged therefrom, and thus a trial by the State Courts of an indictment found under the laws of a State be finally prevented."

This Court, in the case of the *United States* v. *Pridgeon,* 153 U. S., 48, held that there is no law or justice in giving to a prisoner relief under *habeas corpus* that is equivalent to an acquittal when on writ of error he could only have secured relief from that portion of the sentence which was void.

In the case of *Ex parte Terry,* 128 U. S., 289, this Court held that a writ of *habeas corpus* can deal only

with such defects in the proceedings as render them not simply erroneous, or irregular, but absolutely void.

In the case of *Ex parte Bigelow*, 113 U. S., 328, the petitioner sought release by writ of *habeas corpus* on the ground that he was twice put in jeopardy for the same offense, and this Court, in the opinion rendered by Mr. Justice MILLER, makes the following comments and holding:

> "This Article V of the amendments, and Articles VI and VII, contain other provisions concerning trials in the Courts of the United States designed as safe guards to the rights of parties. Do all of these go to the jurisdiction of the Courts? And are all judgments void where they have been disregarded in the progress of the trial? Is a judgment of conviction void when a deposition has been read against a person on trial for crime because he was not confronted with the witness, or because the indictment did not inform him with sufficient clearness of the nature and cause of the accusation?
>
> It may be confessed that it is not always very easy to determine what matters go to the jurisdiction of a Court so as to make its action, when erroneous, a nullity. But the general rule is that when the Court has jurisdiction by law of the offense charged, and of the party who is so charged its judgments are not nullities."

This Court, in one of its latest decisions, in the case of *Reid* v. *Jones*, 187 U. S., 153, through Mr. Justice HARLAN, held as follows:

> "The merits of this case have been fully considered in case No. 269, *Reid* v. *Colorado*, ante 137. But if this had not been we should dismiss the present appeal; for, one convicted in a State Court for an alleged violation of the criminal statutes of the State, and who contends that he is held in violation of the Constitution of the United States, must ordinarily first take his case to the highest Court of the State in which the judgment could be reviewed, and thence bring it, if unsuccessful there, to this Court by writ of error; that only in exceptional cases, of which the present is not one, will a Circuit Court of the United States, or this Court, upon an appeal from a Circuit Court, intervene by writ of *habeas corpus* in advance of the final action by the highest Court of the State."

The entire line of cases in this Court are in harmony with those above referred to, and no good purpose could be served by commenting upon each particular case. If the relator had any such constitutional right upon his trial, as now claimed by him, the failure of the trial Court to accord him such right would be but an error, or irregularity, in the proceedings in the progress of his trial, and one which could

have been corrected upon a writ of error from the Supreme Court of Illinois; and in case it was not corrected there, by a writ of error from this Court to the Supreme Court of Illinois. In any event, all the relief the relator could have obtained, even upon a writ of error, would have been a retrial of his case. The trial Court had jurisdiction of the crime and of his person, and under no circumstances could he have been discharged and set free except by a verdict of a jury finding him not guilty.

The case of *Hopt* v. *Utah,* 110 U. S., 574, cited by counsel for appellant, is not at variance with any of the principles announced in the cases referred to above. That case was a *writ of error* prosecuted from the Supreme Court of the United States to review the judgment of the Supreme Court of the Territory of Utah. It was not a case involving the right to a writ of *habeas corpus,* and this Court held that for various reasons the judgment of the Supreme Court of Utah was erroneous, and this case supports the contention of appellee that even upon a writ of error from the Supreme Court of the United States to the Supreme Court of Illinois, all this Court would have done in any event would be to reverse the judgment of the Supreme Court of Illinois and order a new trial. This

Court stated in the *Hopt* case, on page 583, as follows:

> "For the reasons stated, the judgment of the Supreme Court of the Territory must be reversed and the case remanded, with directions that the verdict and judgment be set aside and a new trial ordered."

In the case of *Hans. Nielsen, Petitioner,* 131 U. S., 176, cited by counsel for appellant, it appeared from *the record* that the Court had *no jurisdiction to render the judgment,* and therefore the writ of *habeas corpus* would lie. This Court, in the *Nielsen* case, *supra,* stated the rule as follows:

> "The objection to the remedy of *habeas corpus,* of course, would be that there was in force a regular judgment of conviction, which could not be questioned collaterally, as it would have to be on *habeas corpus.* But there are exceptions to this rule, which have more than once been acted upon by this Court. It is firmly established that if the Court which renders a judgment *has not jurisdiction to render it,* either because the proceedings or the law under which they are taken are unconstitutional, or for any other reason, the judgment is void and may be questioned collaterally, and a defendant who is imprisoned under and by virtue of it may be discharged from custody on *habeas corpus.* * * * * * It is

true that in the case of Snow we laid emphasis on the fact that the double conviction for the same offense appeared on the face of the judgment; but if it appears in the indictment or anywhere else in the record (of which the judgment is only a part) it is sufficient. In the present case *it appeared on the record* in the plea of *autre fois convict*, which was admitted to be true by the demurrer of the government. We think that this was sufficient."

There is nothing in the *Nielsen* case, *supra*, which is not in harmony with all the other cases on the question involved. Of course, if the Court was absolutely without jurisdiction to render a judgment of conviction, then the writ of *habeas corpus* is a proper remedy, as the judgment in such a case would be absolutely void, but where the trial Court had jurisdiction of the subject matter and of the person, and an error or irregularity is committed in the trial, the judgment entered by the Court in such a case is not void, but is a good and valid judgment until reversed by the proper appellate tribunal.

The other cases cited by appellant have no application to the question at issue in the case at bar, as the right to a writ of *habeas corpus* was not at issue in any of them.

The crime committed in this case was an atrocious one, and the punishment fully deserved, and we respectfully submit that the judgment of the Circuit Court should be affirmed.

WILLIAM H. STEAD,
Attorney General of Illinois,

EDGAR ELDREDGE,
Asst. Attorney General.